1668

SUPREME COURT OF THE UNITED STATES.

No. 166.

JONATHAN W. NESMITH, AND THOMAS NESMITH, COMPLAINANTS,

vs.

THOMAS C. SHELDON & AL.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR MICHIGAN.

At a session of the circuit court of the United States for the seventh circuit and district of Michigan, continued and held, pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-six.

Present: Hon. John McLean, one of the justices of the Supreme Court of the United States, Hon. Ross Wilkins, district judge.

In the case of—

JONATHAN W. NESMITH, and Thomas Nesmith,
vs.
THOMAS C. SHELDON, Horace H. Comstock, David French, William E. Peters, James Forton, Atla E. Mather, Henry B. Holbrook, Samuel P. Mead, Francis E. Eldred, Phebe Ann Dean, Cullen Brown, and Charles H. Stewart.

This was a bill on the equity side of the court to collect from the defendants, as stockholders of the Detroit City Bank, the amount of a claim which had previously been reduced to judgment against said bank, and afterwards against the directors of the same.

The bill alleges that an association of persons was organized by the name of the Detroit City Bank, for banking purposes, under and by virtue of an act of the Legislature of the State of Michigan, entitled "an act to organize and regulate banking associations," approved March 15th, 1837. That certain persons, naming them, were elected and acted as directors. That the defendants were subscribers to certain shares of stock, and were stockholders of said association. That the

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association, claiming to have complied with said act of Legislature, and to be a body politic and corporate, commenced doing business as a banking association, having a president and cashier, and became indebted to the complainants and others, and failed, and became insolvent in February, 1839. That the complainants sued said Detroit City Bank for the debt of said bank owing to them, and recovered a judgment against said bank, in the circuit court for the county of Wayne, and State of Michigan, on the 25th of May, 1841, which is in full force, not paid or satisfied.

That, on the 6th day of July, 1841, the complainants recovered a judgment on their said debt against the directors of said Bank, in this court, which is in full force, and not paid or satisfied; that execution has been issued upon said judgment against the directors, and returned wholly unsatisfied.

The claim or demand on which the suits at law were brought is thus described in the bill of complaint:

"And your orators further shew unto your honor, that, on the fifteenth day of September, A. D. 1838, and while said bank was doing business as a banking institution, said bank at said city of Detroit, by said Harris, the cashier thereof, made their bill of exchange in writing of that date, and directed the same to Watts Sherman, as cashier of the Albany City Bank, and thereby requested said Sherman to pay to the order of your orators, by and in the name, style, and firm of J. W. & T. Nesmith, six hundred dollars, nine months after the date thereof, which period has now elapsed; and said Detroit City Bank, by said Harris, then cashier, then and there wrote across the face of said bill of exchange, or draft, the words acceptance waived, and thereby waived the acceptance thereof, and then and there delivered the same to your orators; which bill of exchange was presented for payment at the Albany City Bank, in the city of Albany, in the State of New York, where the same was made payable on the day the same became due, to wit, on the 18th day of June, A. D. 1839; that the same was not paid, and that the same was then and there duly protested at said Albany City Bank for nonpayment; of all which said several premises said Detroit City Bank afterwards, to wit, on the same day and year last aforesaid, and at said city of Detroit, had due notice."

The bill further avers, that, in the month of January, A. D. 1840, receivers of the bank were appointed, who took into their charge and custody all the property and effects of the bank, so that the complainants could not reach these by an execution on their judgment against the bank.

The directors, against whom judgment was recovered, were Campbell, Mead, Truax, McReynolds, Eldred, Hallock, Brown, Bissel, and Brooks.

The defendants to this bill are, Thomas C. Sheldon, David French, William E. Peters, James Forton, Atla E. Mather, Henry B. Holbrook, Samuel P. Mead, Horace H. Comstock, Francis E. Eldred, and Phebe Ann Dean, as administratrix of Jerry Dean.

All these, as well as the above named directors, are shewn to have been original stockholders of the bank, and to have so continued from its organization till its failure.

In addition to the above, Brown, as receiver, and Stewart, as his attorney, are made parties, for the sake of discovery.

The bill seeks to charge the defendants, as stockholders, in their individual capacity, with the payment of said debt of the association, in pursuance of the act aforesaid, and the amendments thereto; said act giving the right to the Legislature to amend or repeal the same.

The defendants put in general demurrers to the bill.

Article 4th, section 1st, of the Constitution of the State of Michigan, is as follows: "The legislative power shall be vested in a Senate and House of Representatives."

Section 2d, of article 12, of said Constitution, is as follows: "The Legislature shall pass no act of incorporation, unless with the assent of at least two-thirds of each house."

By the 21st section of the amended act, it is declared, that "for all debts of such banking associations, the directors thereof, if such association shall become insolvent, in the first place, shall be liable in their individual capacity to the full amount which such insolvent association may be indebted, and each other stockholder shall thereafter be also liable in like manner, in proportion to his or her amount of stock, for the payment of the full amount of the debts of such insolvent association."

The cause was heard on the bill and demurrers. The following points and questions were made and presented by the complainants:

1st. Whether the banking associations organized under the act of the Legislature of the State of Michigan, entitled "An act to organize and regulate banking associations," approved March 15th, 1837, and the amended act, entitled "An act to amend an act entitled 'an act to organize and regulate banking associations and for other purposes,'" approved December 30th, 1837, were or were not corporations or bodies corporate, within the meaning of the Constitution of the State of Michigan.

2d. Whether said acts of the Legislature, or either of them, are in accordance with the provisions of the Constitution of the State, and valid, or contrary thereto, and void, in whole or in part.

3d. And, if so much and such parts of said acts as purport to create corporations, or bodies corporate, are repugnant to the Constitution and void, whether the remaining parts of said acts are not valid, and the directors and stockholders of the association, set out in the bill, liable for the debts thereof, according to the provisions of said amended act.

4th. Whether the stockholders of the Detroit City Bank are, or are not, liable in their individual capacity, as corporators, or as members of a joint-stock association, company, or co-partnership, to pay the debts due to the complainants, as set forth in the bill.

5th. Whether the defendants are, or are not, liable to pay the debt due to the complainants, set out in the bill of complaint.